

## REMARKS

### I. Summary of Office Action

Claims 1-29 were pending in the application.

The Examiner objected to claims 9, 27, and 28 for being unclear.

The Examiner rejected claim 29 for lacking antecedent basis.

The Examiner rejected claims 1-24 under 35 U.S.C. § 103(a) as being unpatentable over Berckmans U.S. Patent No. 6,876,981 (hereinafter “Berckmans”) in view of Filby et al. U.S. Patent No. 5,025,391 (hereinafter “Filby”).

The Examiner rejected claims 25-29 under 35 U.S.C. § 103(a) as being unpatentable over mutual funds as defined in Barron’s Dictionary of Finance and Investment Terms, Fourth Edition (hereinafter “the Barron’s reference”) in view of the Charles Schwab website that describes their implementation of mutual funds (hereinafter “the Schwab reference”).

Applicant respectfully traverses the above objections and rejections.

### II. Summary of Applicant’s Reply

Applicant has amended claims 1-4, 8-10, 15, 17, 25, and 27-29, canceled claims 18-24, amended the specification, and addressed the Examiner’s objections and rejections. Support for the amendments to the claims can be found throughout the application. Accordingly, it is believed that no new matter has been introduced into the subject application. Cancellations of, and amendments to, the claims do not constitute an acquiescence to any of the Examiner’s objections or rejections. Applicant’s silence with regard to the Examiner’s rejections of the dependent claims constitutes a recognition by the applicant that the rejections are moot based on applicant’s amendments and/or remarks relative to the independent claim from which the dependent claims depend. Applicant reserves the option to further prosecute the same or similar claims in the present or a subsequent application. Upon entry of the amendment, claims 1-17 and 25-62 are pending.

### III. The Objection of Claims 9, 27, and 28

The Examiner objected to the phrase “permit substitution” in claim 9 and the phrase “or each” in claims 27 and 28 for being unclear. Applicant has herein amended claims 9, 27, and 28.

Accordingly, applicant respectfully requests that the Examiner withdraw the objection to claims 9, 27, and 28.

#### **IV. The Rejection of Claim 29**

The Examiner objected to the phrase “the first aspect of the invention” in claim 29 for lacking proper antecedent basis. The Examiner also objected to the phrase “a method or apparatus” in claim 29. Applicant has herein amended claim 29 to correct the lack of antecedent basis and remove the phrase “a method or apparatus.” Accordingly, applicant respectfully requests that the Examiner withdraw the rejection of claim 29.

#### **V. The Prior Art Rejection of Claims 1-17**

The Examiner rejected claims 1-17 under 35 U.S.C. § 103(a) as being unpatentable over Berckmans in view of Filby.

Applicant’s independent claim 1 is directed to an apparatus for periodically fixing a price of a currency, stock, or commodity, where the apparatus includes computer and communications apparatus. Among other things, independent claim 1 includes means for electronically receiving successive price samples of the currency/stock/commodity from a plurality of sources over a period of time and means for recording the received sample values so as to form a historical record of price samples from each source. The apparatus also includes means for filtering the received price sample values automatically by references to the historical record and predetermined validation criteria so as to categorize certain samples as valid or anomalous and means for periodically establishing a fixing period, where the fixing period is within the period of time and intervening periods are outside of the fixing period. The samples received during the fixed period are combined excluding samples categorized as anomalous so as to derive a fixed price. In response to deriving the fixed price, the apparatus includes means for releasing the fixed price to users.

Without conceding that Berckmans discloses any of the elements of the claimed invention, Berckmans **merely relates to delivering market data** to investors in real-time or near real-time, and is unrelated to the present invention recited in independent claim 1 that relates to periodically fixing a price of a currency, stock, or commodity. In particular, Berckmans provides the user with an investment cell having cell attributes that are linked to a plurality of investment

parameters. When there is a change in the investment parameters, the attributes of the investment cell change (e.g., color, cell text, etc.).

Nothing in the cited sections of Berckmans, nor in any other section of Berckmans, disclose or suggests having “means for filtering the received price sample values automatically by reference to said historical record and predetermined validation criteria so as to categorise certain samples as valid or anomalous” or “means for periodically establishing a fixing period within said period of time and intervening periods outside of said fixing period, and combining the samples received during said fixing period, excluding samples categorised as anomalous, so as to derive a fixed price.” Berckmans discloses sending data from the real-time server to an intra-day database service that determines if the received data should be discarded or recorded. “Once the data in the intra-day database becomes more than one day old, it is transferred to a historical database by means of a historical database server. The historical database server compresses, deletes, and otherwise manages the data in the historical database.” (See Berckmans, column 4, lines 44-57.) That is, Berckmans teaches nothing more than routinely deleting data that is more than one day old to manage storage capacity. Berckmans is not capable of determining whether certain price samples are valid or anomalous.

In addition, it should be noted that Berckmans is merely capable of displaying investment data to a viewer. Berckmans does not establish a fixing period where samples received during the fixing period are used to derive a fixed price.

Based on the foregoing remarks, applicant traverses the Examiner’s rejection of independent claim 1. Accordingly, applicant respectfully requests that the rejection of claim 1 be withdrawn.

Applicant respectfully submits that the rejections with respect to dependent claims 2-17 are moot based on applicant’s remarks relative to the independent claim from which the dependent claims depend. Accordingly, applicant respectfully submits that claims 2-17, each of which depends from independent claim 1, are allowable for at the same reasons that independent claim 1 is allowable.

In addition, dependent claims 2-17 are also asserted to patentably distinguish over Berckmans, when each of the dependent claims are interpreted as a whole.

For example, dependent claim 2 further recites distinguishing between price samples of different contributors within the samples received from the given source. In another example

example, dependent claim 3 further recites that the receiving means is arranged to receive from at least one source samples of trading prices paid in actual trade orders in addition to receiving non-binding prices quoted by other contributors. In yet another example, dependent claim 5 further recites that the filtering means is arranged to process trading prices and quoted prices each according to different criteria and dependent claim 6 further recites that the combining means is arranged to apply different processing to the trading prices and the quoted prices to arrive at the fixed price. In yet another example, dependent claim 11 further recites that the filter means is arranged to distinguish between price samples coming from various specific contributors, where the re-categorization is performed in a manner dependent on whether the sample received subsequently are from the same contributor as the questionable sample or a different contributor.

Nothing in the cited sections of Berckmans, nor in any other section of Berckmans, disclose or suggests these additional features that relate to distinguishing between price samples. For example, in connection with dependent claims 3 and 4, the Examiner cites the portion of Berckmans that describes receiving financial data from financial exchanges. Berckmans makes no mention of receiving price samples for the same stock from different sources, receiving trading prices in actual trade orders and non-binding prices quoted by other contributors, filtering trading prices and quoted prices according to different criteria, or distinguishing between price samples of different contributors. Accordingly, for these reasons as well, applicant respectfully submits that dependent claims 2-17 patentably distinguish over the prior art of record, when each of the claims is interpreted as a whole.

## **VI. The Prior Art Rejection of Claims 25-29**

The Examiner rejected claims 25-29 under 35 U.S.C. § 103(a) as being unpatentable over mutual funds as defined in the Barron's reference in view of the Schwab reference.

Applicant's independent claim 25 is directed to a method of trading in a currency, stock, or commodity by a dealing party. Independent claim 25 includes, among other things, the dealing party accepting from a plurality of clients binding orders to trade quantities of the currency/stock/commodity, where the prices of said trades are not fixed at the time of accepting the order but are defined by reference to a reference price to be fixed at a specified fixing time by a trusted third party. The reference price is fixed by the trusted third party that applies a

predetermined methodology to price samples received from competing sources, where the applied methodology is independent of any position held by the dealing party in the currency, stock or commodity. After the fixing time, the dealing party receives from the trusted third party a record of the reference price fixed at the fixing time. The dealing party settles each of the accepted orders with the respective clients in accordance with the prices defined by reference to the reference price.

Without conceding that Barron or Schwab disclose any of the limitations of the claim, neither the Barron's reference nor the Schwab reference disclose or suggest, for example, including a trusted third party that fixes a reference price at a specified fixing time, where the reference price is fixed by the trusted third party applying a predetermined methodology to price samples received from competing sources, and where the applied methodology is independent of any position that is held by the dealing party in the currency, stock or commodity. In fact, neither the Barron's reference nor the Schwab reference include a dealing party, a plurality of clients, and a trusted third party that fixes a reference price using an approach independent of any position that is held by the dealing party. The Unit Trust Manager of the Schwab reference is not independent of any position that is held by the dealing party.

Based on the foregoing remarks, applicant traverses the Examiner's rejection of independent claim 25. Accordingly, applicant respectfully requests that the rejection of claim 25 be withdrawn.

Applicant respectfully submits that the rejections with respect to dependent claims 26-29 are moot based on applicant's remarks relative to the independent claim from which the dependent claims depend. Accordingly, applicant respectfully submits that claims 26-29, each of which depends from independent claim 25, are allowable for at least the same reasons that independent claim 25 is allowable.

In addition, dependent claims 26-29 are also asserted to patentably distinguish over the Barron's reference in view of the Schwab reference, when each of the dependent claims are interpreted as a whole.

For example, dependent claim 27 is directed to allowing the trusted third party to fix prices at a series of predetermined fixing times throughout the day. As recited in dependent claim 27, orders received after the end of one of the predetermined fixing times is accepted for a later fixing time. As recited in dependent claim 29, the trusted third party performs particular

features to fix the price. However, as described previously, neither the Barron's reference nor the Schwab reference show or suggest a trusted third party that fixes a reference price using an approach independent of any position that is held by the dealing party. Accordingly, for these reasons as well, Applicant respectfully submits that dependent claims 26-29 patentably distinguish over the prior art of record, when each of the claims is interpreted as a whole.

## **VII. New Claims 30-62**

Applicant has added new claims 30-62. Support for claims 30-62 can be found throughout the specification.

New claims 30-62 are believed to be allowable when each of these claims is interpreted as a whole. Accordingly, prompt consideration and allowance of these claims is respectfully requested.

## CONCLUSION

Applicant respectfully submits that, as described above, the cited prior art does not show or suggest the combination of features recited in the claims. Applicant does not concede that the cited prior art shows any of the elements recited in the claims. However, applicant has provided specific examples of elements in the claims that are clearly not present in the cited prior art.

In addition, each of the combination of limitations recited in the claims includes additional limitations not shown or suggested by the prior art. Therefore, for these reasons as well, applicant respectfully requests withdrawal of the rejection.

Further, there is no motivation shown to combine the prior art cited by the Examiner, and even if these teachings of the prior art are combined, the combination of elements of claims, when each is interpreted as a whole, is not disclosed in the Examiner's proposed combination. As the combination of elements in each of the claims is not disclosed, applicant respectfully requests that the Examiner withdraw the rejections.

Applicant strongly emphasizes that one reviewing the prosecution history should not interpret any of the examples applicant has described herein in connection with distinguishing over the prior art as limiting to those specific features in isolation. Rather, applicant asserts that it is the combination of elements recited in each of the claims, when each claim is interpreted as a whole, which is patentable. Applicant has emphasized certain features in the claims as clearly not present in the cited references, as discussed above. However, applicant does not concede that other features in the claims are found in the prior art. Rather, for the sake of simplicity, applicant is providing examples of why the claims described above are distinguishable over the cited prior art.

Applicant wishes to clarify for the record, if necessary, that the claims have been amended to expedite prosecution. Moreover, applicant reserves the right to pursue the original subject matter recited in the present claims in a continuation application.

Any narrowing amendments made to the claims in the present Amendment are not to be construed as a surrender of any subject matter between the original claims and the present claims; rather merely applicant's best attempt at providing one or more definitions of what the applicant believes to be suitable patent protection. In addition, the present claims provide the intended scope of protection that applicant is seeking for this application. Therefore, no estoppel

should be presumed, and applicant's claims are intended to include a scope of protection under the Doctrine of Equivalents.

Further, applicant hereby retracts any arguments and/or statements made during prosecution that were rejected by the Examiner during prosecution and/or that were unnecessary to obtain allowance, and only maintains the arguments that persuaded the Examiner with respect to the allowability of the patent claims, as one of ordinary skill would understand from a review of the prosecution history. That is, applicant specifically retracts statements that one of ordinary skill would recognize from reading the file history were not necessary, not used and/or were rejected by the Examiner in allowing the patent application.

For all the reasons advanced above, applicant respectfully submits that the rejections have been overcome and should be withdrawn.

For all the reasons advanced above, applicant respectfully submits that the Application is in condition for allowance, and that such action is earnestly solicited.



## AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees, which may be required for this Amendment, or credit any overpayment to Deposit Account No. 08-0219.

In the event that an Extension of Time is required, or which may be required in addition to that requested in a petition for an Extension of Time, the Commissioner is requested to grant a petition for that Extension of Time which is required to make this response timely and is hereby authorized to charge any fee for such an Extension of Time or credit any overpayment for an Extension of Time to Deposit Account No. 08-0219.

Respectfully submitted,

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